

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Martin J. & Deborah L. Nitschke,
Petitioners-Appellants,

v.

City of Clinton Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-102-0396
Parcel No. 80-20640000

On June 14, 2012, the above-captioned appeal came on for a telephone hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioners-Appellants Martin J. and Deborah L. Nitschke did not participate in the hearing. They were self-represented. Attorney J. Drew Chambers of Holleran, Shaw, Murphy & Stoutner, Clinton, Iowa is counsel for the Board of Review and represented it at hearing. The Board of Review submitted evidence in support of its decision. The Appeal Board now having examined the entire record, and being fully advised, finds:

Findings of Fact

Martin J. and Deborah L. Nitschke, owners of property located at 1147 N 10th Street, Clinton, Iowa, appeal from the City of Clinton Board of Review decision reassessing their property. According to the property record card, the subject property consists of a one-story, frame dwelling having 864 square feet of living area on the main level and 389 square feet of finished attic built in 1968; a full basement with 425 square feet of recreation room finish; a 242 square-foot, concrete patio; and three concrete stoops. The dwelling has average quality grade (4+5) and is in normal condition. It also has a 308 square-foot, attached garage. The property has 16% physical depreciation. The improvements are situated on a 0.167 acre site.

The real estate was classified as residential on the January 1, 2011, assessment and valued at \$112,390, representing the \$16,800 land value and \$95,590 in dwelling value.

Nitschkkes protested to the Board of Review on the grounds that the property was assessed for more than authorized by law under Iowa Code section 441.31(1)(b) and that there had been a change in value since the last reassessment under sections 441.37(1) and 441.35. They claimed \$85,000, representing \$8400 in land value and \$76,600 in dwelling value was the actual value and a fair assessment of the property. The Board of Review denied the protest.

Nitschkkes then appealed to this Board raising equity and fraud claims in addition to the over-assessment claim raised at the Board of Review. Because equity and fraud were not first raised before the Board of Review, we will not address them. Iowa Code § 441.37A(1)(b). Additionally, this Board notes, in a re-assessment year, a challenge based on downward change in value is akin to a market value claim. *See Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006) (unpublished). Accordingly, we only consider the claim that the property is over assessed.

In their petition, Nitschkkes assert their assessment is too high and homes in their neighborhood are not selling. They claim the property is also in a high traffic area. Additionally, they believe economic issues like unemployment and a stagnant economy has lowered the value of their dwelling. They provided no evidence to support these contentions or to prove the fair market value of their property. As previously noted, even though the hearing was rescheduled at their request, they did not participate in the hearing.

The Board of Review submitted evidence purportedly to show the Nitschkkes purchased the property in May 2006 for \$116,000; however, the warranty deed is dated June 2006 and does not indicate the sale price. The property record card indicates the dwelling was purchased in June 2006, for \$116,900. We also note the date of sale precedes the assessment date by five years; therefore, we give it no consideration.

Reviewing the entire record, we find the preponderance of the evidence fails to support Nitschkes' claim of over-assessment.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

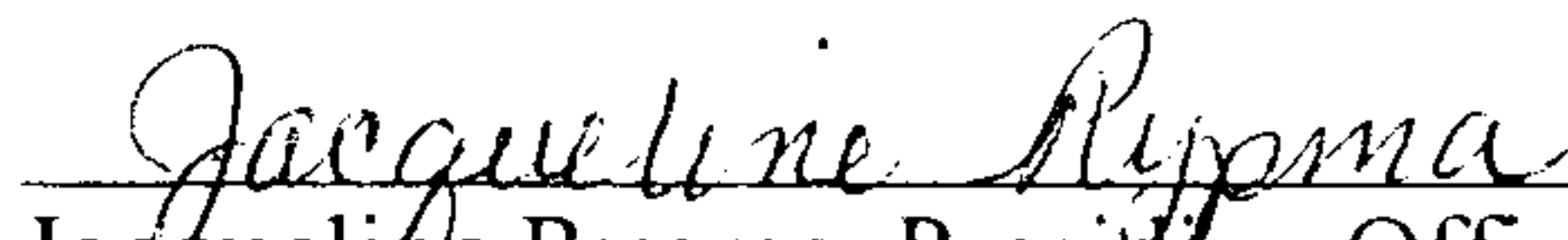
In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277

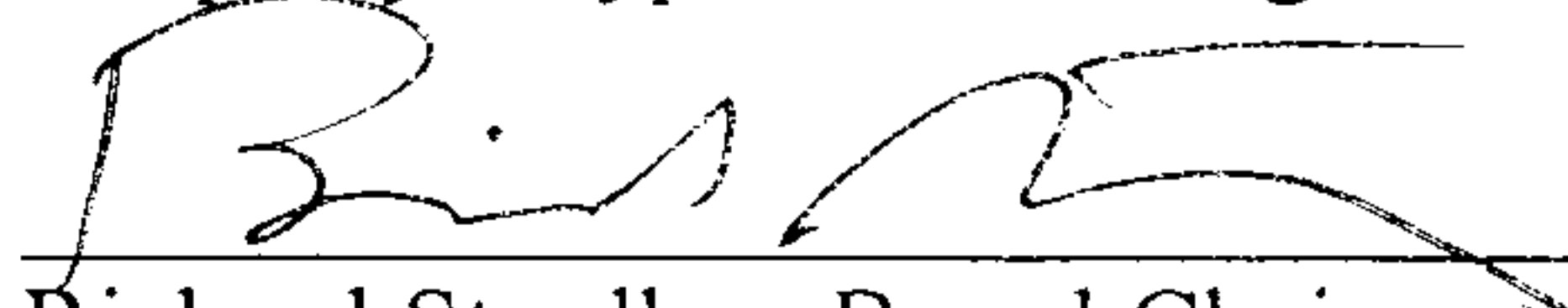
(Iowa 1995). Nitschkkes failed to provide any evidence to support their claim that the subject property was assessed for more than authorized by law.

Viewing the record as a whole, we determine that the preponderance of the evidence fails to support Nitschkkes' claim. The Appeal Board determines the assessed value of Nitschkkes' property located at 1147 N 10th Street, Clinton, is \$112,390, representing \$16,800 in land value and \$95,590 in dwelling value, as of January 1, 2011.

THE APPEAL BOARD ORDERS that the January 1, 2011, assessment as determined by the City of Clinton Board of Review is affirmed.

Dated this 6 day of August 2012.


Jacqueline Rypma, Presiding Officer


Richard Stradley, Board Chair


Karen Oberman, Board Member

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>8-6</u> , 201 <u>2</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	